

Falls Church, Virginia 20530

File: D2014-331

Date: FEB 10 2015

In re: CHRISTOPHER R. MACARAEG, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Megan B. Herndon
Section Chief, Immigration Court Practice Section - West

The respondent will be suspended indefinitely from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (DHS).

On October 14, 2014, the Supreme Court of California issued a final order suspending the respondent from the practice of law for 60 days. In addition, on November 24, 2014, the United States Court of Appeals for the Ninth Circuit accepted the respondent's resignation from the Ninth Circuit bar, with disciplinary proceedings pending. Consequently, on December 15, 2014, the Disciplinary Counsel for the Executive Office of Immigration Review (EOIR) initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the Board and the Immigration Courts. The Department of Homeland Security (DHS) then asked that the respondent be similarly suspended from practice before the DHS. We granted the petition on January 5, 2015.

On January 14, 2015, the respondent filed an answer to the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(c)(1). In the answer, the respondent does not request a hearing. Accordingly, the opportunity for a hearing is deemed waived. 8 C.F.R. § 1003.105(c)(3).

In addition, the respondent does not contest any of the allegations in the Notice of Intent to Discipline. The respondent instead asks that a sanction other than indefinite suspension be imposed on him. In making this request, the respondent admits that he resigned while disciplinary proceedings were pending before the United States Court of Appeals for the Ninth Circuit, and he admits that he does not fit within any of the exceptions to disciplinary sanctions contained in 8 C.F.R. § 1003.103(b)(2)(i)-(iii). The respondent nevertheless points out that the California State Bar only suspended him from practice for 60 days. The respondent further indicates that he fears that a suspension by the Board will be a permanent suspension. He claims that his family needs him to return to the practice of law as soon as possible and that he hoped this return would have been after January 13, 2015, when his suspension with the California State Bar was scheduled to expire.

The Disciplinary Counsel for the EOIR has responded to the respondent's filing with a motion for summary adjudication. In the motion, EOIR's Disciplinary Counsel states that the respondent has not made a prima facie showing that any material issues of fact are in dispute in

his proceedings. EOIR's Disciplinary Counsel further states that the respondent has not claimed that an exception to reciprocal discipline is applicable to his case. EOIR's Disciplinary Counsel asserts that financial hardship is immaterial to the issue of whether the Board should impose identical reciprocal discipline. Accordingly, EOIR's Disciplinary Counsel asks the Board to retain jurisdiction over the case and issue a final order indefinitely suspending the respondent from practice before the Board, the Immigration Courts, and the DHS.

Because the respondent does not dispute the allegations in the Notice of Intent to Discipline, we find it appropriate to issue a final order on the charges made by the EOIR Disciplinary Counsel. *See* 8 C.F.R. § 1003.106(a) (2013) (indicating that, if the respondent's answer to a Notice of Intent to Discipline does not make a prima facie showing that there are any material issues of fact in dispute, the Board shall issue a final order); *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011). Further, we agree with EOIR's Disciplinary Counsel that indefinite suspension from practice before the Board, the Immigration Courts, and the DHS is an appropriate sanction.

The regulations governing disciplinary proceedings state that a final order of disbarment or suspension or a resignation while a disciplinary proceeding is pending creates a rebuttable presumption of professional misconduct. *See* 8 C.F.R. § 1003.103(b)(2). Disciplinary sanctions shall follow in such proceedings unless the attorney can rebut the presumption by providing "clear, unequivocal, and convincing evidence" that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. *Id.*; *see also Matter of Salomon*, 25 I&N Dec. 559 (BIA 2011); *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010).

The respondent admits that none of these exceptions apply to his case. In addition, EOIR's Disciplinary Counsel is correct that the hardships and difficulties attendant to disbarment or suspension do not equate to injustice. *See Matter of Kronegold, supra*, at 162 (discussing what amounts to grave injustice). Further, the fact that one court imposed a lesser sanction on the respondent than another does not constitute a grave injustice. *Id.* Finally, the respondent has not established that he now can meet the definition of attorney set forth in 8 C.F.R. § 1001.1(f), and his indefinite suspension from practice before the Board, the Immigration Courts, and the DHS is not necessarily a permanent suspension. The respondent may seek reinstatement to practice in accordance with the provisions of 8 C.F.R. § 1003.107.

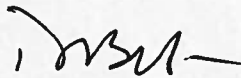
Based on the foregoing, we deny the respondent's request for an alternate (unspecified) sanction, and we indefinitely suspend the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our January 5, 2015, order of suspension, we will deem his suspension to have commenced on that date.

ORDER: The Board hereby indefinitely suspends the respondent from practice before the Board, the Immigration Courts, and the DHS.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against him.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107 (2013).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2) (2013).

A handwritten signature in black ink, appearing to be "J. M. S.", is written above a horizontal line.

FOR THE BOARD